UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DANIEL J. MacGILLIVRAY	:	
	:	PRISONER
v.	:	Case No. 3:04CV1523(CFD)
	:	
CHRISTINE WHIDDEN, et al.	:	

RULING AND ORDER

Plaintiff Daniel J. MacGillivray ("MacGillivray"), an inmate formerly confined at the Carl Robinson Correctional Institution in Enfield, Connecticut, brings this civil rights action pro se, pursuant to 28 U.S.C. § 1915. He names as defendants Warden Christine Whidden, Commissioner of Correction Theresa Lantz, the UCONN Managed Inmate Health Care System and Nurse Enrica White. MacGillivray alleges that the defendants have been deliberately indifferent to his serious medical needs. Pending is defendants' motion to dismiss.[1] For the reasons that follow, defendants' motion is granted.

I. Standard of Review

When considering a Rule 12(b)(6) motion to dismiss, the court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Flores v. Southern Peru Copper Corp., 343 F.3d 140, 143 (2d Cir. 2003). Dismissal is inappropriate unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. See Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 654 (1999); Sweet v. Sheahan, 235 F.3d 80, 83 (2d Cir. 2000). "'[T]he issue is not whether a plaintiff will

[1]MacGillivray has filed a response to the motion to dismiss.

ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.'" York v. Association of Bar of City of New York, 286 F.3d 122, 125 (2d Cir.) (quoting Scheuer, 416 U.S. at 236), cert. denied, 537 U.S. 1089 (2002). In other words, "'the office of a motion to dismiss is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.'" Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of New York, 375 F.3d 168, 176 (2d Cir. 2004) (quoting Geisler v. Petrocelli, 616 F.2d 636, 639 (2d Cir. 1980)). However, "[c]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss" from being granted. Smith v. Local 819 I.B.T. Pension Plan, 291 F.3d 236, 240 (2d Cir. 2002) (internal quotation marks and citation omitted).

II. Facts

For the purposes of deciding this motion, the court assumes that the following allegations contained in the complaint are true.

Prior to his incarceration, MacGillivray was treated for diverticulitis and Hepatitis C. On June 8, 2004, upon admission to the Department of Correction, MacGillivray advised the medical staff at Hartford Correctional Center of his Hepatitis C status. He did not report his history of diverticulitis.

On June 15, 2004, he was transferred to the Carl Robinson Correctional Institution. In July 2004, MacGillivray began experiencing problems relating to diverticulitis. He informed triage nurse D. St. Germain of his history and requested examination by a doctor. He has not been treated for diverticulitis or Hepatitis C, notwithstanding his additional requests to see medical personnel.

III. Discussion

Defendants move to dismiss on the grounds that all claims for damages against the UCONN Managed Inmate Health Care System and the other defendants in their official capacities are barred by the Eleventh Amendment, and MacGillivray has not included any allegations suggesting the personal involvement of defendants Whidden, Lantz or White in their individual capacities.

A. Claims Against the UCONN Managed Inmate Health Care System

It is well-settled that a state agency is not a "person" within the meaning of section 1983. See Fisher v. Cahill, 474 F.2d 991, 992 (3d Cir. 1973) (state prison department cannot be sued under section 1983 because it does not fit the definition of "person" under section 1983); Ferguson v. Morgan, No. 90 Civ. 6318 (JSM), 1991 WL 115759, at *1 (S.D.N.Y. 1991) (Otisville Correctional Facility medical staff not a person under section 1983); Grabow v. Southern State Correctional Facility, 726 F. Supp. 537, 538-38 (D.N.J. 1989) (Department of Corrections not a person under section 1983); Allah v. Commissioner of Dep't of Correctional Services, 448 F. Supp. 1123, 1125 (N.D.N.Y. 1978) (New York Department of Correctional Services not a person under section 1983). The University of Connecticut Correctional Managed Health Care Program, identified by MacGillivray as "UCONN Managed Inmate Health Care System," is a division of the University of Connecticut Health Center that provides medical care to Connecticut inmates. As a state agency, the program is not a "person" within the meaning of section 1983. Thus, MacGillivray's claims against the UCONN Managed Inmate Health Care System lack an arguable legal basis and are dismissed. See 28 U.S.C. Section

1915(e)(2)(B)(ii)(directing court to dismiss at any time allegations that fail to state a claim upon which relief may be granted).

B. Official Capacity Damages Claims Against Defendants Whidden, Lantz and White

MacGillivray seeks damages from defendants Whidden, Lantz and White. Generally, a suit for recovery of money may not be maintained against the state itself, or against any agency or department of the state, unless the state has waived its sovereign immunity under the Eleventh Amendment. See Florida Dep't of State v. Treasure Salvors, 458 U.S. 670, 684 (1982). Section 1983 does not override a state's Eleventh Amendment immunity. See Quern v. Jordan, 440 U.S. 332, 342 (1979). The Eleventh Amendment immunity, which protects the state from suits for monetary relief, also protects state officials sued for damages in their official capacity. See Kentucky v. Graham, 473 U.S. 159 (1985). A suit against a defendant in his official capacity is ultimately a suit against the state if any recovery would be expended from the public treasury. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 101 n.11 (1984).

MacGillivray does not indicate in his complaint whether he seeks damages from defendants Whidden, Lantz and White in their individual or official capacities. Any claim for damages against these defendants in their official capacities, however, is barred by the Eleventh Amendment. Thus, Defendants' motion to dismiss is granted as to any official capacity claims for damages.

C. Personal Involvement of Defendants Whidden, Lantz and White

Defendants next argue that all claims against them in their individual capacities should be dismissed because MacGillivray has not alleged facts suggesting that any of these defendants was

involved in the claimed denial of medical care.

It is settled law in this circuit that in a civil rights action for monetary damages against a defendant in his individual capacity a plaintiff must demonstrate the defendant's direct or personal involvement in the actions which are alleged to have caused the constitutional deprivation. See Wright v. Smith, 21 F.3d 496, 501 (2d Cir. 1994).

Defendant White is the head nurse at the Carl Robinson Correctional Institution. Defendant Whidden is the warden at Carl Robinson, and defendant Lantz the Commissioner of the Connecticut Department of Correction. Other than naming them in the case caption, MacGillivray does not mention any of these defendants in the complaint. Thus, there are no allegations suggesting that defendants White, Whidden and Lantz were at all involved in the alleged denial of medical care.

In opposition to the motion to dismiss, MacGillivray states that he "can and will prove a multitude of facts in support of his claim." (Mem. Opp. Mot. Dismiss, Doc. #17, at 2.) MacGillivray cannot amend his complaint in his memorandum. See Natale v. Town of Darien, No. CIV. 3:97CV583 (AHN), 1998 WL 91073, at *4 n.2 (D. Conn. Feb. 26, 1998) (holding plaintiff may not amend complaint in memorandum of law) (citing Daury v. Smith, 842 F.2d 9, 15-16 (1st Cir. 1988)); Hartford Fire Ins. Co. v. Federated Dep't Stores, Inc., 723 F. Supp. 976, 987 (S.D.N.Y. 1989) (same). However, even if the court could consider the claims in his memorandum, MacGillivray includes no facts regarding the personal involvement of defendants White, Whidden and Lantz in his care.

In addition, all three defendants are supervisory officials. "A supervisor may not be held liable under section 1983 merely because his subordinate committed a constitutional tort."

Leonard v. Poe, 282 F.3d 123, 140 (2d Cir. 2002). Section 1983 imposes liability only on the official causing the violation. Thus, the doctrine of respondeat superior is inapplicable in section 1983 cases. See Blyden v. Mancusi, 186 F.3d 252, 264 (2d Cir. 1999); Prince v. Edwards, No. 99 Civ. 8650(DC), 2000 WL 633382, at *6 (S.D.N.Y. May 17, 2000) ("Liability may not be premised on the respondeat superior or vicarious liability doctrines, . . . nor may a defendant be liable merely by his connection to the events through links in the chain of command.")(internal quotations and citation omitted). However,

> [A] supervisor may be found liable for his deliberate indifference to the rights of others by his failure to act on information indicating unconstitutional acts were occurring or for his gross negligence in failing to supervise his subordinates who commit such wrongful acts, provided that the plaintiff can show an affirmative causal link between the supervisor's inaction and [his] injury.

Leonard, 282 F.3d at 140.

MacGillivray has alleged no facts in his complaint suggesting that defendants Whidden and Lantz were aware of his medical needs. There are also no claims in MacGillivray's memo suggesting that MacGillivray ever informed either defendant of his problems. He also does not allege that defendant White ever treated him or that he informed her of his medical needs. He merely claims that she and the other two individual defendants should have known about his needs. His allegations that they should have known of his situation because of their supervisory positions-without more--is an attempt to assert a claim under respondeat superior. As stated above, such claims are not cognizable under section 1983.

Because MacGillivray has alleged no facts demonstrating the personal involvement of defendants White, Whidden and Lantz, defendants' motion to dismiss is granted as to all claims

for damages against these defendants in their individual capacities. Because it is possible that, by amending the complaint, MacGillivray might be able to allege facts demonstrating their personal involvement, the dismissal of these claims is without prejudice. MacGillivray may file a proposed amended complaint alleging facts demonstrating the personal involvement of defendants White, Whidden and Lantz in the denial of medical care.

D. Claims for Injunctive Relief

MacGillivray also seeks injunctive relief against defendants Whidden, Lantz, and White in their official capacities. Defendants have not addressed these claims.

The Second Circuit has held that an inmate's request for injunctive relief against correctional staff or conditions of confinement at a particular correctional institution becomes moot when the inmate is discharged or transferred to a different correctional institution. See Mawhinney v. Henderson, 542 F.2d 1, 2 (2d Cir. 1976). See also Martin-Trigona v. Shiff, 702 F.2d 380, 386 (2d Cir. 1983) ("The hallmark of a moot case controversy is that the relief sought can no longer be given or is not longer needed"). Other courts concur with this result. See, e.g., McAlpine v. Thompson, 187 F.3d 1213, 1215 (10th Cir. 1999) (noting that an inmate's claim for prospective injunctive relief regarding conditions of confinement is rendered moot upon his release from confinement).

MacGillivray has informed the Court that he has been released from custody. Thus, his claims for injunctive relief are dismissed as moot pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

IV. Conclusion

Defendants' motion to dismiss [**doc. # 15**] is **GRANTED**. All claims against defendant UCONN Managed Inmate Health Care System and defendants Whidden, Lantz, and White are

dismissed pursuant to Fed. R. Civ. P. 12(b) and 28 U.S.C. § 1915(e)(2)(B)(ii). The Clerk is directed to enter judgment and close this case.

MacGillivray may file an amended complaint and move to reopen this case provided he can allege facts demonstrating the personal involvement of defendants White, Whidden, and Lantz in the denial of medical care. Any amended complaint and motion to reopen must be filed within **twenty (20)** days from the date of this ruling.

SO ORDERED this 10th day of March, 2006, at Hartford, Connecticut.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE